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OFFICE OF GENERAL  
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November 20, 2000

Darryl R. Wold  
Chairman  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Chairman Wold:

Enclosed is a formal Memorandum of Response from the Kemp for Vice President Committee, of which I am Treasurer, to the General Counsel's Probable Cause Brief in MUR 4947. I ask the Commission to carefully consider this Response.

I am deeply puzzled by the Commission's treatment of this matter. In my sworn affidavit submitted some time ago, I explained that until the end of October of 1996 I believed the Committee had ongoing debt and unreceived bills, and therefore a continuing need to raise additional funds. The General Counsel's office acknowledges the existence of this sworn statement, but then completely ignores its content and import even though it should be dispositive of the Committee's right to continue raising funds for outstanding debt during that period. If the counsel recommends the Commission reject my sworn explanation, why and on what grounds? If they accept my statement, why is this matter being pursued?

The Committee is now completely broke, with no prospect whatsoever of raising additional funds from an election which occurred four years ago, and with a former candidate who has now left political life. I therefore hope my attached memorandum explains this matter in sufficient detail, to your satisfaction. I believe the Committee acted lawfully and in accord with the FEC regulations at all times.

Sincerely,

  
Kirk Clinkenbeard

21-01-405-1427

## MEMORANDUM

TO: Chairman Darryl R. Wold  
Vice Chairman Danny McDonald  
Commissioner Lee Ann Elliott  
Commissioner David M. Mason  
Commissioner Karl J. Sandstrom  
Commissioner Scott E. Thomas  
Commissioner Bradley A. Smith

FROM: Kirk Clinkenbeard KLC

DATE: November 21, 2000

RE: MUR 4947: Response Of The Kemp For Vice President Committee And Kirk Clinkenbeard To The Office Of The General Counsel's Probable Cause Brief

This memorandum is in response to the General Counsel's Probable Cause Brief, dated October 3, 2000. The Brief informed me that the Office of General Counsel ("OGC") is prepared to recommend that the Commission find probable cause to believe that the Kemp for Vice President Committee ("the Committee"), and I as treasurer (collectively "Respondents"), violated 2 U.S.C. § 441a and 11 C.F.R. § 110.1(b)(3)(i) when the Committee transferred \$100,000 to the National Republican Senatorial Committee ("NRSC") in October of 1996. For the reasons stated below, the Commission should find that there is *no* "probable cause to believe" that the Committee and I have violated the Federal Election Campaign Act ("FECA") of 1971, as amended.

### I. Respondents' Statement of the Case

"The Act and Commission regulations provide that excess campaign funds may be used for several purposes, including transfers without limitation to any national, State, or local committee of any political party. . . . 'Excess campaign funds' are defined as amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." FEC Advisory Opinion 1990-2 (citing 2 U.S.C. § 439a; 11 C.F.R. § 113.1(e); 11 C.F.R. § 113.2(c)).

If the Commission will carefully consider my sworn statement and the statement of Amy Gilbert, a certified public accountant who was hired by the Committee after the Republican National Convention was held on August 14, 1996 to assist the Committee in preparing its FEC reports, the Commission should find that (1) the Committee permissibly received and retained contributions during the period that we legitimately believed we had an existing debt; (2) some of these funds were thereafter determined to be excess campaign funds; and (3) these excess

campaign funds were transferred to a party committee in accordance with the Act, Commission regulations, and Advisory Opinions. Once those findings are made, I respectfully urge the Commission to dismiss this Matter.

## **II. Analysis**

### **A. The Brief Relies On Speculative Facts That Are Contradicted By My Sworn Affidavit**

Respondents have searched the Brief in vain for some discussion of the meaning of my sworn affidavit. Respondents believe this statement is dispositive of the Matter and are frustrated that the Brief neither acknowledges nor refutes my statement, but merely notes its existence without further comment or any explanation of why it is not dispositive. My sworn statement explains in detail the Committee's debt expectations as defined by § 110.1(b)(3). In summary, at the time the Committee was raising money during the late summer and early fall of 1996, my main goal was "to ensure that the Committee did not end with a debt, in the face of uncertain and ever-increasing estimates of costs incurred." My initial projection of approximately \$250,000 of Committee expenditures, made prior to the 1996 Republican National Convention in San Diego was only a "guesstimate" of what actual expenditures might be. My expectations were almost immediately changed once I arrived in San Diego and began establishing a schedule for Secretary Kemp and constructing an actual budget. I initially revised my projection to show costs of \$350,000, but—as the Convention ended and bills for additional expenditures made on behalf of Secretary Kemp prior to his nomination continued to arrive—my estimate rose to \$500,000. Accordingly, I set out to raise \$500,000.

In the days surrounding Secretary Kemp's nomination, the *first* contributions began to trickle into the Committee's account. The Committee received these contributions with the understanding that it was hundreds of thousands of dollars in debt. During the next five to six weeks, my basic calculation remained, and with a number of costs still outstanding and unknown, there was no cause for me to adjust my \$500,000 estimate downward; just an urgency to collect contributions to pay off the debt as quickly as possible. Accordingly, based on the Committee's valid expectation of expenses, it continued to accept contributions well into October.

Near the end of October, as most of the bills were accounted for and I had recalculated the amount of net debts outstanding, I first realized that the debts would not be as large as I had feared. This is confirmed by Ms. Gilbert in her sworn affidavit. Once it was clear the anticipated debts would be covered by the funds on hand, the Committee ceased soliciting contributions and began considering what it should do with its excess campaign funds.<sup>1</sup> The Committee was aware that under federal law the Committee could transfer its excess campaign

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<sup>1</sup> Of course, even after I had determined that the Committee had excess funds and after the Committee had transferred funds to the NRSC, the Committee continued to receive new, previously unaccounted for, bills including legal, accounting, hotel, and telecommunications bills. I had anticipated that the Committee would continue to receive additional invoices and had accordingly kept a (now entirely depleted) cash reserve to cover any late arriving bills.

funds "without limitation to any national, State, or local committee of any political party." *Id.* Therefore, the Committee chose to transfer \$100,000 to the NRSC.

**B. The Brief Relies On Speculative Facts That Are Contradicted  
By Amy Gilbert's Sworn Affidavit**

Respondents also were disappointed to find no mention of Ms. Gilbert's sworn affidavit. Even more egregious than the omission, however, is that the Brief simply carries over language from past OGC submissions without even considering the facts testified to in Ms. Gilbert's affidavit—not to mention my affidavit. Without providing any foundation, the Brief (at 4 n.4) states:

KVP originally told the Audit staff that the treasurer had not kept track of KVP's debt position and that no workpapers were available for review. However, at an end of fieldwork conference on April 21, 1998, counsel for the Committee stated that although workpapers were not prepared, the treasurer had kept a continuous running balance of KVP's debt position.

The initial "KVP" can only mean Ms. Gilbert, with whom the auditors met for field work. Ms. Gilbert is an accountant who assisted the Committee and accordingly was consulted by the Audit staff during the audit process. Based on this language in the "reason to believe" stage, Ms. Gilbert filed an affidavit with the Commission to address this mischaracterization of the Committee's actions and procedures. She stated: "To clarify for the record, I did not have in my possession, nor was I aware of, any specific debt schedule, nor did I monitor cash flow. However, I was aware that the treasurer, Kirk Clinkenbeard, was monitoring cashflow, and accordingly this would have involved both cash receipts and cash disbursements, as well as managing ongoing outstanding vendor debts. This monitoring of cashflow, by its very nature, includes the monitoring of debt."

For the record, I am legally blind and do not typically write memoranda or keep written records: it is simply too difficult. I rely on my memory and keep such information in my head. Ms. Gilbert had no responsibility for keeping track of the Committee's debt position; she was supposed to rely on the numbers that I provided to her and help the Committee with its reports. As treasurer, it was *my* responsibility to "*calculate net debts outstanding as of the date of the election*" and to adjust "*[t]he amount of the net debts outstanding . . . as additional funds are received and expenditures are made.*" *Id.* §§ 110.1(b)(3)(ii) and (iii). I again confirm the testimony I gave in my sworn affidavit that I performed these duties. Moreover, Ms. Gilbert testified that she believed that I had kept a record:

My belief that Mr. Clinkenbeard was monitoring the debt derived from our continual discussions regarding cash receipts and cash disbursements, in which Mr. Clinkenbeard communicated his concern regarding whether the Committee would have sufficient funds to pay off its obligations. Accordingly, Mr. Clinkenbeard would discuss his ongoing effort to solicit and collect contributions

2025-04-21

for the Committee. New vendor invoices continued to come into the Committee well into November 1996, thus adding to the Committee's expenses. As the debts began to diminish, Mr. Clinkenbeard's concern for raising more contributions subsided in our discussions.

### **III. Conclusion**

Based on the above, Respondents urge the Commission to find that the Committee permissibly received and retained contributions during the period that it estimated a debt remained, and that the Committee therefore properly transferred \$100,000 to the NRSC.

Attachments: Gilbert and Clinkenbeard Affidavits

MEMORANDUM

TO: Rhonda Simmons  
Henry Miller  
FEC Audit Staff

FROM: Kirk L. Clinkenbeard  
Treasurer  
Kemp for Vice President

DATE: April 29, 1998

RE: Raising Funds for Anticipated Debt

As treasurer for the Kemp for Vice President Committee, I, Kirk L. Clinkenbeard, was responsible for a budget that we first estimated (prior to the 1996 Republican National Convention in San Diego) to be in the \$250,000 range. Upon arriving at the Convention and establishing a schedule for Secretary Kemp's activities in San Diego, it became clear that the costs associated with promoting him for the Republican Vice Presidential nomination would be higher, and I initiated a continuing budgetary process which resulted in a revised budget of approximately \$350,000 by the date of his nomination, with some costs still unknown. After the Convention, and as firmer estimates of costs of expenses incurred on Secretary Kemp's behalf during the convention came in, (and with a number of costs such as travel still outstanding and of an unknown amount at that point), I estimated that we would need to raise in excess of \$500,000 to cover our likely final costs.

The record should show that this committee was established for the sole purpose of helping Jack Kemp acquire the Vice Presidential nomination and was put together in a timely but flexible manner. We had to operate on guesstimates of actual expenditures, and were legally responsible for all costs actually incurred on behalf of Jack Kemp at the Convention prior to his nomination, whether or not they were authorized and budgeted in advance. At no time in 1996 did I intentionally raise any contributions for the Kemp for Vice President Committee beyond my reasonable expectations of what our budget would require. My goal in post-Convention fundraising was to ensure that the Committee did not end with a debt, in the face of uncertain and ever-increasing estimates of costs incurred. Based on our estimates of over \$500,000 in expenses, we continued to accept contributions into October. It was only towards the end of that month as all of the final bills were accounted for, that it became clear that the Committee's bills would not be as high as we had feared, thereby leaving the Committee with some excess funds already on hand.

*Kirk L. Clinkenbeard*  
4-29-98

21.04.405.1432

**GILBERT & WOLFAND, P.C.**  
**Certified Public Accountants**

2201 WISCONSIN AVENUE, N.W. • WASHINGTON, D.C. 20007  
(202) 342-6000 • FAX (202) 333-6116

**Affidavit of Amy C. Gilbert**

1. My name is Amy C. Gilbert. I am a certified public accountant with Gilbert & Wolfand, P.C. in Washington, D.C.
2. Gilbert & Wolfand, P.C. was hired by the Kemp for Vice President Committee to assist the Committee in preparing its FEC reports. In addition, we made the deposits for cash receipts and prepared monthly bank reconciliations.
3. I have reviewed the Factual and Legal Analysis. I am concerned that the Audit staff did not fully understand my limited participation in the financial operations. The Factual and Legal Analysis states (at 4), "The Committee originally told the Audit staff that the treasurer had not kept track of KVP's debt position and that no workpapers were available for review." To clarify for the record, I did not have in my possession, nor was I aware of, any specific debt schedule, nor did I monitor cash flow. However, I was aware that the treasurer, Kirk Clinkenbeard, was monitoring cashflow, and accordingly, this would have involved both cash receipts and cash disbursements, as well as managing ongoing outstanding vendor debts. This monitoring of cashflow, by its very nature, includes the monitoring of debt.
4. My belief that Mr. Clinkenbeard was monitoring the debt derived from our continual discussions regarding cash receipts and cash disbursements, in which Mr. Clinkenbeard communicated his concern regarding whether the Committee would have sufficient funds to pay off its obligations. Accordingly, Mr. Clinkenbeard would discuss his ongoing effort to solicit and collect contributions for the Committee. New vendor invoices continued to come into the Committee well into November 1996, thus adding to the Committee's expenses. As the debts began to diminish, Mr. Clinkenbeard's concern for raising more contributions subsided in our discussions.
5. I declare under penalty of perjury that the foregoing is true and correct.
6. Executed on 1.13.00

  
Signed

Washington, DC

I am a notary public in Washington, DC and my commission expires: 10/31/2004.  
THIS INSTRUMENT was acknowledged before me on 01/13/2000 by Amy C. Gilbert,  
who is personally known to me or who has produced identification and who did take an  
oath.

Notary Seal

Signature: 

Notary Public

Printed Name: Barbara A. Bell

21-04-405-1433

Affidavit of Kirk L. Clinkenbeard

1. My name is Kirk L. Clinkenbeard. I served as treasurer for the Kemp for Vice President Committee in 1996 ("the Committee").
2. I have again reviewed the attached statement which I signed on April 29, 1998 and hereby affirm its veracity.
3. I declare under penalty of perjury that the foregoing is true and correct.
4. Executed on 10-24-98

Kirk L. Clinkenbeard  
Signed

21-04-405-1434  
FBI "SOH" HQ-12